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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B5

DATE: JUN 13 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software consulting business. It seeks to permanently employ the beneficiary in the United States as an operations manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director denied the petition on the ground that the beneficiary did not have the requisite education for the proffered position, as specified on the labor certification, ETA Form 9089, approved by the Department of Labor (DOL). A timely appeal was filed.

On December 28, 2011, the AAO sent a notice of intent to dismiss (NOID) to the petitioner, with a copy to counsel. The AAO reviewed the evidence of record in regard to the U.S. equivalency of the beneficiary's educational credentials from India, and advised the petitioner of information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which backed the Director's previous finding that the beneficiary's academic credentials – including a three-year Bachelor of Applied Sciences degree from the University of Delhi and a two-year Post Graduate Diploma (PGD) in Business Management from the Institute of Productivity & Management (IPM) in Ghaziabad – were not, in combination, equivalent to a U.S. bachelor's degree in business administration, as required on the labor certification. The petitioner responded to the NOID with additional evidence of the U.S. equivalency of the beneficiary's Indian educational credentials.

On March 28, 2012, the AAO sent a request for evidence (RFE) to the petitioner, with a copy to counsel. In the RFE the AAO noted that there was conflicting evidence in the record as to the petitioner's business location, and asked for clarification as to the applicable business address in this proceeding. The AAO also requested additional documentation to (1) confirm the intended job location of the proffered position, (2) establish the beneficiary's prior employment history, and (3) establish the petitioner's continuing ability to pay the proffered wage from the priority date up to the present. The petitioner was afforded 45 days to respond to the RFE with additional evidence. The petitioner was advised that a failure to respond would result in the dismissal of the appeal without further discussion.

The petitioner did not respond within the 45-day period specified in the RFE (or any time since then). If a petitioner fails to respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Since the petitioner has not responded to the RFE of March 28, 2012, the petition is deniable under the regulatory provisions cited above. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.